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In re Application of
Hu et al.

DEC 01 2004

Application No. 10/696,002
Filed: October 30, 2003

OFFICE OF PETITIONS

For: VASCULAR ENDOTHELIAL GROWTH FACTOR 2
Attorney Docket No: PF112P3C2US
Pub. No.: US 2004/0143103 A1
Pub. Date: July 22, 2004

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on September 21, 2004 for the above-identified application.

The request is DISMISSED.

Applicant request that the application be republished because the patent application publication contains a material error, as the sequence listing filed with the application is not in the publication itself or in the PSIPS database.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹ The instant request does not identify a material mistake in the publication made by the Office:

The errors are not material mistakes because the application is a Continuation of U.S. Application 10/084,488 filed February 28, 2002, now U.S. Patent No. 6,734,285. Since, the parent application is now patented and published and contains the information printed correctly, the errors do not affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance

¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

of a patent. The error also does not affect the use of the patent application publication as a prior art reference, because the continuity data is correctly published and the patent has the best date as a reference. Furthermore, this is not a material error since the Image File Wrapper (IFW) for this application is available to the public, as of July 31, 2004.

The applicant is advised that a “request for republication of an application previously published” may be filed under 37 CFR 1.221(a). Such a request for republication “must include a copy of the application in compliance with the Office’s electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i).” If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), must be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

By mail to: Mail Stop PGPUB
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P.O. Box 1450
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By facsimile: 703-872-9306

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709.


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